

Application Serial No. 10/039,047
Attorney Docket No. 60027.0218USU1/BS01155
Amendment & Response

REMARKS

This Amendment is in response to the Office Action dated March 10, 2006. Claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 were examined in the Office Action. Claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 were rejected.

Examination and reconsideration based on this Amendment and the following remarks are respectfully requested.

Claim Objections

Claim 13 has been amended in accordance with the Examiner's presumption outlined in the Office Action and is now believed to be in a condition for allowance.

Claim Rejections - 35 U.S.C. § 103

Claims 6, 7, 9, 10, 36, 37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al., U.S. Patent No. 6,594,699 (hereinafter Sahai) and Natarajan et al., U.S. Patent No. 6,539,427 (hereinafter Natarajan), and Bahadiroglu, U.S. Patent Application Publication No. 2002/0186660 (hereinafter Bahadiroglu).

Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai and Bahadiroglu.

Applicant respectfully submits, however, that Bahadiroglu does not qualify as prior art under 35 U.S.C. §103(a). The filing date of the Bahadiroglu published application is June 12, 2001. The Declaration of Lee Friedman under 37 C.F.R. §1.131 establishes conception of the invention defined by the claims in the present application in the United States prior to June 12, 2001 and, coupled with due diligence, establishes filing of the present application on December 31, 2001. Therefore, the rejection of claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 under 35 U.S.C. §103(a) should be withdrawn.

Applicant also submits that independent claims 6, 13, and 36 are not obvious over Sahai and/or Natarajan because Sahai and Natarajan, neither alone nor in combination, teach each recitation of claims 6, 13, and 36. For example, neither Sahai nor Natarajan alone or in combination teach or suggest "requesting new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment." (See Sahai and

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Natarajan abstracts). Thus, Applicant also respectfully traverses the assertion that dynamically adapting data upon detecting changes in the quality of service parameters for each network segment was widely known in the art at the time of the invention.

Furthermore, at least because Bahadiroglu is not prior art, and because Sahai and/or Natarajan do not teach, suggest or describe each of the recitations of claims 6, 13, and 36, Applicant respectfully submits that the rejection of these claims under 35 U.S.C. §103(a) should be withdrawn for at least this reason also.

Dependent Claims 7, 9, 10, 37, and 39

Regarding claims 7, 9, 10, 37, and 39, Applicant submits that claims 7, 9, 10, 37, and 39 are also in condition for allowance by virtue of their dependency on allowable independent claims 6, 13, and 36. MPEP §2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Accordingly, Applicant respectfully requests withdrawal of the rejection to claims 7, 9, 10, 37, and 39 for at least this reason also. Regarding the Examiner's additional assertions, which have not been addressed specifically, Applicant respectfully submits that these arguments are moot in view of the above remarks. Accordingly, in view of the above arguments, Applicant respectfully submits that claims 7, 9, 10, 37, and 39 are in condition for allowance.

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CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,
MERCHANT & GOULD

Date: August 10, 2006



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